

EXHIBIT A

EXHIBIT "A"

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Kern County Superior Court
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Minors H.C., A.C., by and through Their Guardian Ad Litem
DOLORES HERNANDEZ, ASHLEY CEBALLOS,
EMMA CEBALLOS, EDWARD CEBALLOS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

Minors H.C. and A.C., as successors in
interest to GRACIANO CEBALLOS,
by and through their Guardian Ad
Litem DOLORES HERNANDEZ;
ASHLEY CEBALLOS; EMMA
CEBALLOS; and EDWARD
CEBALLOS,

Plaintiffs,

v.

COUNTY OF KERN, DEPUTY
KOLTE PAXSON; SGT. ADRIAN
OLMOS; DEPUTY BRYAN
EIDENSHINK SR.; DEPUTY
NATHAN PUCILOWSKY; DEPUTY
DWAYNE PERKINS; DEPUTY
JESSICA ZAVALA and DOES 1
through 10, inclusive,

Defendants.

CASE NO.: BCV-20-102481

COMPLAINT FOR DAMAGES

1. Violation of Civil Rights Under
Color Of Law (42 U.S.C. § 1983);
2. Violation of Substantive Due
Process (42 U.S.C. § 1983);
3. Municipal Liability for
Ratification (42 U.S.C. § 1983);
4. Municipal Liability for
Unconstitutional Custom, Practice,
or Policy (42 U.S.C. § 1983);
5. Intentional Infliction of Emotional
Distress;
6. Assault and Battery (Wrongful
Death);
7. Wrongful Death/Survival Based on
Negligence;
8. Negligent Infliction of Emotional
Distress;
9. Violation of Section 52.1 of The
California Civil Code (Tom Bane
Act Violation)

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES

1
2 1. COMES NOW, Plaintiffs Minors H.C. and A.C., as successors in
3 interest to GRACIANO CEBALLOS, by and through their Guardian Ad Litem,
4 DOLORES HERNANDEZ, ASHLEY CEBALLOS, EMMA CEBALLOS,
5 EDWARD CEBALLOS (hereinafter, sometimes collectively referred to herein as
6 "Plaintiffs") in their Complaint against Defendants COUNTY OF KERN, DEPUTY
7 KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK;
8 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
9 JESSICA ZAVALA and DOES 1-10, inclusive (hereinafter, sometimes collectively
10 referred to as "Defendants") hereby allege as follows:

11 **INTRODUCTION**

12 2. This action seeks compensatory damages, punitive damages, attorneys'
13 fees and costs from individual police officers, and compensatory damages, attorneys'
14 fees and costs including from Defendants COUNTY OF KERN, (hereinafter also
15 referred to "COUNTY"), and DOES 1-10, inclusive for violations of state law,
16 federal law and fundamental rights under the United States Constitution in
17 connection with the shooting of GRACIANO CEBALLOS (Hereinafter referred to
18 as "Decedent") on or about April 18, 2020, GRACIANO CEBALLOS was shot by
19 Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY
20 BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY
21 DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10 while in the
22 course and scope of their duties as law enforcement officers.

23 3. It is herein alleged that Defendants DEPUTY KOLTE PAXSON; SGT.
24 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK; DEPUTY NATHAN
25 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
26 and DOES 1-10, acting in their individual capacity, under color of law and in the
27 course and scope of their employment with Defendant COUNTY OF KERN and its
28 sheriff department, the COUNTY OF KERN SHERIFF'S DEPARTMENT,

1 (hereinafter referred to "KCSO") used unreasonable and/or excessive deadly force
2 when they shot GRACIANO CEBALLOS, without legal cause or excuse, and made
3 an unreasonable seizure of the person of GRACIANO CEBALLOS, thereby
4 violating the constitutional rights of Decedent, GRACIANO CEBALLOS and
5 Plaintiffs under the respective Fourth and Fourteenth Amendments to the United
6 States Constitution and violating California state law and common law. It is
7 additionally alleged herein that Plaintiff EDWARD CEBALLOS, the brother and
8 close personal relative of Decedent, GRACIANO CEBALLOS, contemporaneously
9 witnessed the shooting of his brother, GRACIANO CEBALLOS, and suffered severe
10 emotional distress.

11 JURISDICTION

12 4. Plaintiffs, Minors HC and AC, by and through Their Guardian Ad Litem
13 DOLORES HERNANDEZ, and ASHLEY CEBALLOS, assert causes of action
14 under, and for violations of, the following laws and/or legal theories:

- 15 (a) Federal Civil Rights Act under 42 U.S.C. Sections 1983, 1985, 1986,
16 and 1988;
- 17 (b) The Fourth Amendment of the United States Constitution;
- 18 (c) The Fourteenth Amendment of the United States Constitution;
- 19 (d) Assault and Battery;
- 20 (e) Negligent Infliction of Emotional Distress.
- 21 (f) Negligence (Including Negligent Tactics); and
- 22 (g) Violation of Section 52.1 of The California Civil Code (Tom Bane Act
23 Violation.

24 5. Plaintiff EMMA CEBALLOS asserts a cause of action under, and for
25 violations of, the following laws and/or legal theory, Violation of her rights under
26 The Fourteenth Amendment of the United States Constitution.

27 ///

28 ///

6. Plaintiff EMMA CEBALLOS asserts a cause of action under, and for violations of, the following laws and/or legal theory, Violation of her rights under The Fourteenth Amendment of the United States Constitution.

7. Plaintiff EDWARD CEBALLOS asserts a cause of action under, and for violations of, the following laws and/or legal theories:

- (a) Federal Civil Rights Act under 42 U.S.C. Sections 1983, 1985, 1986, and 1988.
- (b) False imprisonment;
- (c) Abuse of Process;
- (d) Violation of Section 52.1 of The California Civil Code (Tom Bane Act Violation)

VENUE

8. This action is was properly filed in the KERN County Superior Court, as Defendants reside, and all incidents, events, occurrences, and injuries complained of herein were occurred and were suffered, in KERN County, California. Each Plaintiff herein timely and properly presented Government Claims (tort claims) pursuant to Cal. Gov. Code §910, *et seq.* Plaintiffs timely presented a Government Claim within six months of the incident forming the basis of this lawsuit and have complied fully with the Governmental torts claims statute as to the Plaintiffs' state claims.

9. This action was timely removed by defendants and is properly within the jurisdiction of the United States District Court Central District Of California, Southern Division.

PARTIES

10. Plaintiffs EMMA CEBALLOS and EDWARD CEBALLOS were residents of the County of KERN , State of California during all times relevant hereto at the time of the injuries and damages suffered related to the police shooting incident of April 18, 2020.

1 11. Minors HC, AC, and adult Plaintiff ASHLEY CEBALLOS, at all times
2 were residents of the County of Los Angeles, State of California during all times
3 relevant hereto at the time of the injuries and damages suffered related to the police
4 shooting incident of April 18, 2020.

5 12. Decedent, GRACIANO CEBALLOS at all times was a resident of the
6 County of KERN, State of California until his untimely death on April 18, 2020.
7 Decedent, GRACIANO CEBALLOS is the natural son of Plaintiff EMMA
8 CEBALLOS and natural brother of EDWARD CEBALLOS. Decedent,
9 GRACIANO CEBALLOS is the natural father of Plaintiffs Minors HC, AC, and
10 adult Plaintiff ASHLEY CEBALLOS.

11 13. Defendant COUNTY OF KERN is a chartered subdivision of the State
12 of California with the capacity to sue and be sued. Defendant COUNTY is
13 responsible for the actions, omissions, policies, procedures, practices and customs of
14 its various agents and agencies, including the KCSD, and its agents and employees.
15 At all times relevant to the facts alleged herein, Defendant COUNTY was responsible
16 for assuring that the actions, omissions, policies, procedures, practices and customs
17 of the KCSD and its employees and agents complied with the laws and the
18 Constitution of the United States and of the State of California.

19 14. At all times mentioned herein, Defendants DEPUTY KOLTE
20 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR.;
21 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
22 JESSICA ZAVALA, and DOES 1-10, are and were, duly sworn police officers
23 employed by Defendant COUNTY OF KERN. At all times herein mentioned,
24 Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY
25 BRYAN EIDENSHINK SR.; DEPUTY NATHAN PUCILOWSKY; DEPUTY
26 DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10 were acting
27 in their individual and/or, in the alternative, their official capacities and in the course
28 and scope of their employment with Defendant COUNTY, and therefore acting under

1 color of law.

2 15. Plaintiffs are informed and believe, and thereon allege, Defendants
3 DOES 1-10, including COUNTY Deputies were and are, and at all times herein
4 mentioned were, duly appointed and acting as police officers/officers for Defendant
5 COUNTY, and were at all material times acting under color of state law, and as the
6 employees, agents and representatives of every other Defendant. Defendants DOES
7 1-10 were acting under color of law and within the course and scope of their
8 employment, including but not limited to under California Government Code
9 §§815.2, 820 and 825, on or about the April 18, 2020 date of the incident. Defendant
10 COUNTY is legally responsible for all damages caused by the intentional and/or
11 negligent and/or otherwise tortuous conduct of Defendants DEPUTY KOLTE
12 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;
13 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
14 JESSICA ZAVALA, and DOES 1-10, as alleged herein. By the filing of this
15 Complaint, Plaintiffs, and each of them do hereby sue all Defendants, including
16 Defendants COUNTY, DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
17 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
18 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10
19 and any Defendant COUNTY OF KERN Sheriff's Deputy who shot Decedent,
20 GRACIANO CEBALLOS, including Defendants DOES 1-10.

21 16. At all times relevant to the present complaint, Defendants DEPUTY
22 KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK
23 SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;
24 DEPUTY JESSICA ZAVALA, and DOES 1-10, were acting within their capacity as
25 employees, agents, representatives and servants of Defendant COUNTY, which is
26 liable under the doctrine of *Respondeat Superior*, pursuant to Sections 815.2, 820
27 and 825 of the California Government Code, et. al.

28 ///

17. The true names of Defendants DOES 1-10, inclusive, are unknown to Plaintiffs, who therefore sues these defendants by such fictitious names. Plaintiffs will seek leave to amend this complaint to show the true names and capacities of these defendants when they have been ascertained. Each of the fictitious named defendants is responsible in some manner for the conduct and liabilities alleged herein. Defendants DOES 1-10 include, but are not limited to, any and all Sheriff's Deputies who used force on, seized, shot Decedent, GRACIANO CEBALLOS, as well as any and all supervisors, commanders, officers, sergeants, captains, lieutenants, and/or civilian employees of Defendant COUNTY OF KERN, including within the County of Kern Sheriff's Department.

18. Each of the Defendants caused and is responsible for the unlawful conduct and resulting, by, inter alia, personally participating in the conduct, or acting jointly and in concert with others who did so; by authorizing, acquiescing or failing to take action to prevent the unlawful conduct. Whenever and wherever reference is made in this Complaint to any act by a Defendant, such allegation and reference shall also be deemed to mean the acts and failures to act of each Defendant individually, joint, and severally. They are sued in their individual and official capacities and in some manner are responsible for the acts and omissions alleged herein. Plaintiffs will ask leave of this Court to amend this Complaint to allege such name and responsibility when that information is ascertained. Each of Defendants is the agent of the other and the actions of each of the Defendants were ratified by the other Defendants.

GENERAL ALLEGATIONS

19. On or about April 18, 2020, Decedent GRACIANO CEBALLOS was the driver of a vehicle with his brother EDWARD CEBALLOS, (a paraplegic disabled human) as a passenger in the vehicle. Decedent was driving around his community upset over personal issues. Does 1-5 residence in which a personal dispute arose. The decedent allegedly fired a gun in the air. He did not fire the gun

1 at any person or aim the gun in the direction of anyone. He drove away from the
2 scene when Sheriff deputies DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
3 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
4 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA and DOES 1-10
5 initiated a traffic stop. The Decedent was observed by said defendant to toss a firearm
6 out the window of the car and a pursuit started. The pursuit lasted approximately 30
7 minutes. During the pursuit the decedent never fired a weapon at any officer. Also,
8 during the pursuit Plaintiff EDWARD CEBALLOS did not do anything besides sit
9 in the vehicle.

10 20. When the pursuit ended, decedent GRACIANO CEBALLOS took one
11 step out of the vehicle. At this time Defendants DEPUTY KOLTE PAXSON; SGT.
12 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
13 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA
14 and DOES 1-10 took out their guns and began to fire at Decedent, without warning,
15 shooting him dead. As the defendants were shooting decedent Plaintiff CEBALLOS
16 remained inside the vehicle.

17 21. Decedent, GRACIANO CEBALLOS's brother, Plaintiff EDWARD
18 CEBALLOS, observed with his eyes as Defendants DEPUTY KOLTE PAXSON;
19 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
20 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
21 ZAVALA, shot his brother, GRACIANO CEBALLOS. Plaintiff EDWARD
22 CEBALLOS suffered severe emotional harm because of watching his brother shot to
23 death.

24 22. Plaintiffs are informed and believe, and upon such information and
25 belief allege, Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
26 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
27 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10
28 utilized negligent tactics, failed to appropriately warn of use of force and violated

1 Defendant COUNTY OF KERN and Kern County Sheriff Department Policies and
2 Procedures for use of deadly force, and other policies and procedures.

3 23. Decedent, GRACIANO CEBALLOS did not present a risk of imminent
4 threat of death or great bodily injury to any of these defendant officers, or anyone
5 else to justify the use of lethal deadly force.

6 24. At the time of the shooting Decedent, GRACIANO CEBALLOS was
7 not engaged in the commission of a crime and, under the United States Constitution
8 and the cases interpreting it, had rights including a liberty interest to be free in one's
9 person from unlawful search and seizure of one's person in his home, and a right not
10 to be subjected to the use of unreasonable and/or excessive force by police officers
11 against him within the confines of his home.

12 25. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
13 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
14 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
15 and each of them, discharged their firearms recklessly, intentionally, tortuously, with
16 deliberate indifference and/or negligently, with the intent to kill and/or commit
17 serious bodily injury upon, Decedent, GRACIANO CEBALLOS and to violate his
18 civil rights.

19 26. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
20 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
21 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
22 and each of them knowing that EDWARD CEBALLOS did not and could physically
23 commit a crime, proceeded to intentionally and maliciously file false police reports
24 stating Plaintiff EDWARD CEBALLOS attempted to commit murder of a police
25 officer and/or that Plaintiff EDWARD CEBALLOS attempted to assault.

26 27. As a result of defendants' false statements Plaintiff EDWARD
27 CEBALLOS was incarcerated with a 3.5 million-dollar bail. Consequently, Plaintiff
28 EDWARD CEBALLOS was coerced and tortured to enter a plea for resisting arrest,

1 which was something he was physically incapable of doing.

2 28. As a direct and proximate result of the acts of Defendants DEPUTY
3 KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK
4 SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;
5 DEPUTY JESSICA ZAVALA, and DOES 1-10, all Plaintiffs suffered injuries and
6 damages as described below.

7 **FIRST CAUSE OF ACTION**
8 **FOR VIOLATION OF CIVIL RIGHTS UNDER COLOR OF LAW**
9 **(42 U.S.C. SECTION 1983)**
10 **(BY PLAINTIFFS' ASHLEY CEBALLOS AND MINORS, HC, AC,**
11 **INDIVIDUALLY, AND AS SUCCESSORS IN INTEREST TO**
12 **GRACIANO CEBALLOS AGAINST ALL DEFENDANTS)**

13 29. Minors HC, AC, by and through Their Guardian Ad Litem DOLORES
14 HERNANDEZ, and ASHLEY CEBALLOS hereby repeat, re-alleges and
15 incorporates each allegation of each, and every paragraph above as though fully set
16 forth herein.

17 30. This action is brought pursuant to 42 U.S.C. Section 1983, the Fourth
18 and the Fourteenth Amendments of the United States Constitution, for an
19 unreasonable seizure of the person including the use of unreasonable and excessive
20 force; violation of liberty interest; and unreasonable use of deadly force by
21 Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY
22 BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY
23 DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10 against
24 Decedent, GRACIANO CEBALLOS.

25 31. On April 18, 2020, Defendants DEPUTY KOLTE PAXSON; SGT.
26 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
27 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
28 and DOES 1-10, inclusive, and each of them, acting in their individual capacities and

1 under color of state law, intentionally used unreasonable and excessive force,
2 including without any verbal warning, intentionally using deadly force and shot
3 Decedent, GRACIANO CEBALLOS, in violation of 42 U.S.C. §1983, and in
4 violation of the Fourth and Fourteenth Amendments to the United States
5 Constitution. Unreasonable, unnecessary and/or excessive force was used by
6 Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY
7 BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY
8 DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive,
9 who were acting in their individual capacities, under color of law and authority and
10 in the course and scope of their employment with Defendant COUNTY OF KERN
11 and OCSD.

12 32. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
13 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
14 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
15 inclusive, and each of them, had an obligation to only use reasonable force rather
16 than to use unreasonable, unnecessary or excessive force. This obligation included,
17 but was not limited to, the obligation to use appropriate tactics regarding
18 verbalization; de-escalation; not shooting at an unarmed person; containment and
19 other appropriate police tactics before resorting to utilizing deadly force. Defendants
20 DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN
21 EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE
22 PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, and each of
23 them, were trained only to use deadly force only in the direst of circumstances, only
24 after all other means of taking a subject into custody have been exhausted and only
25 as a last resort.

26 33. The aforementioned acts of Defendants DEPUTY KOLTE PAXSON;
27 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
28 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA

1 ZAVALA, and DOES 1-10, inclusive, and each of them, were malicious, willful,
2 oppressive and despicable conduct as herein alleged, as each aforementioned
3 defendant acted with a conscious disregard of the rights and safety of Decedent,
4 GRACIANO CEBALLOS and said defendants acted with the specific intent to injure
5 and kill Decedent, GRACIANO CEBALLOS. Plaintiff is therefore entitled to
6 punitive damages in an amount sufficient to punish and make an example of these
7 aforementioned individual Defendants, and, in order to promote greater safety and
8 provide an incentive for said defendants and others so situated to not engage in such
9 conduct.

10 34. As a direct and proximate result of said constitutional violations,
11 tortious acts, omissions or conduct of Defendants DEPUTY KOLTE PAXSON;
12 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
13 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
14 ZAVALA, and DOES 1-10, inclusive, Decedent GRACIANO CEBALLOS was
15 killed, and suffered before his death.

16 35. Plaintiffs, Minors HC, AC, and adult ASHLEY CEBALLOS, having
17 the right of survivorship, seek all damages for the pain, suffering, anxiety, fear of
18 impending death and severe emotional distress that Decedent GRACIANO
19 CEBALLOS suffered before his death, in a sum to be determined according to proof.
20 Plaintiffs herein also seek damages for funeral and burial expenses of Decedent
21 GRACIANO CEBALLOS in a sum to be determined according to proof.

22 36. As a direct and proximate result of said tortious acts, omissions or
23 conduct of Defendants, and each of them, Plaintiffs Minors HC, AC, and adult
24 ASHLEY CEBALLOS, their father, Decedent GRACIANO CEBALLOS died and
25 said Plaintiffs have sustained and incurred, and is certain in the future to sustain and
26 incur losses, injuries, and damages which are itemized as follows: a) Funeral and
27 burial expenses in a sum to be determined according to proof. Plaintiffs will request
28 leave of Court to determine the total amount thereof, once the same has been

1 ascertained; b) Attorneys' fees and costs pursuant to 42 U.S.C. §1988.

2 **SECOND CAUSE OF ACTION**

3 **FOR VIOLATION OF SUBSTANTIVE DUE PROCESS**

4 **(42 U.S.C. §1983)**

5 **(BY PLAINTIFFS' EMMA CEBALLOS ASHLEY CEBALLOS AND**
6 **MINORS, HC, AC, AGAINST ALL DEFENDANTS)**

7 37. Plaintiffs hereby repeat, re-allege and incorporate each, and every
8 allegation of every paragraph above as though fully set forth herein.

9 38. Decedent, GRACIANO CEBALLOS and Plaintiffs Minors HC, AC,
10 ASHLEY CEBALLOS , and EMMA CEBALLOS each had a cognizable interest
11 under the Due Process Clause of the Fourteenth Amendment of the United States
12 Constitution to be free from state actions that deprive them of life, liberty, or property
13 in such a manner as to shock the conscience, including but not limited to unwarranted
14 government interference in Decedent, GRACIANO CEBALLOS and Plaintiffs
15 GRACIANO CEBALLOS' and EMMA CEBALLOS' familial relationship.

16 39. More specifically, the use of force by Defendants DEPUTY KOLTE
17 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;
18 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
19 JESSICA ZAVALA, and DOES 1-10, was so outrageous that it shocks the
20 conscience because Decedent, GRACIANO CEBALLOS was shot by Defendants
21 DOES 1-10 when the officers could all see GRACIANO CEBALLOS posed no
22 imminent threat to anyone.

23 40. Decedent, GRACIANO CEBALLOS had a cognizable interest under
24 the Due Process Clause of the Fourteenth Amendment of the United States
25 Constitution to be free from state actions that deprive him of life, liberty, or property
26 in such a manner as to shock the conscience.

27 41. The actions of Defendants DEPUTY KOLTE PAXSON; SGT.
28 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN

1 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
 2 and DOES 1-10, inclusive, and each of them and along with other undiscovered
 3 conduct, shocks the conscience, in that they acted with deliberate indifference to the
 4 constitutional rights of Decedent, GRACIANO CEBALLOS, and/or with purpose to
 5 harm unrelated to any legitimate law enforcement objective. Defendants DEPUTY
 6 KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK
 7 SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;
 8 DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, had time to deliberate
 9 regarding the use of force and the use of deadly force and they acted with deliberate
 10 indifference to the constitutional rights of Decedent, GRACIANO CEBALLOS by
 11 issuing no warning and then using unjustified deadly force against Decedent,
 12 GRACIANO CEBALLOS while decedent's brother, EDWARD CEBALLOS
 13 contemporaneously witnessed the Defendants' unconstitutional use of excessive and
 14 unreasonable force against, Decedent, GRACIANO CEBALLOS.

15 42. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
 16 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
 17 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
 18 inclusive, violated the substantive due process rights of the Plaintiffs listed above to
 19 be free from unwarranted interference with their familial relationship with Decedent
 20 GRACIANO CEBALLOS.

21 43. As a direct and proximate cause of the acts of Defendants DEPUTY
 22 KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK
 23 SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;
 24 DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, and each of them,
 25 Plaintiffs MINORS HC, AC, BY AND THROUGH THEIR GUARDIAN AD
 26 LITEM DOLORES HERNANDEZ, ASHLEY CEBALLOS, AND EMMA
 27 CEBALLOS have been deprived of the life-long love, companionship, comfort,
 28 support, society, care, and sustenance of Decedent GRACIANO CEBALLOS, and

1 will continue to be so deprived for the remainder of her natural life.

2 44. The conduct of Defendants DEPUTY KOLTE PAXSON; SGT.
3 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
4 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
5 and DOES 1-10, inclusive, and each of them was willful, wanton, malicious, and
6 therefore warrants the imposition of exemplary and punitive damages as to
7 Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY
8 BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY
9 DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and each of them

10 45. Defendants DOES 1-10, inclusive, and each of them, are each liable for
11 Decedent GRACIANO CEBALLOS's injuries, either because they engaged in the
12 above conduct; because they were integral participants in the above conduct; or
13 because they failed to intervene to prevent the above conduct.

14 **THIRD CAUSE OF ACTION**

15 **MUNICIPAL LIABILITY FOR RATIFICATION**

16 **(42 U.S.C. § 1983)**

17 **(BY PLAINTIFFS' ASHLEY CEBALLOS AND MINORS, HC, AC,**
18 **INDIVIDUALLY, AND AS SUCCESSORS IN INTEREST TO**
19 **GRACIANO CEBALLOS AGAINST COUNTY)**

20 46. Plaintiff repeats and re-alleges each allegation in all the preceding
21 paragraphs of this Complaint with same force and effect as if fully set forth herein.

22 47. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
23 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
24 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,, and Does 1
25 through 10, inclusive acted under color of law.

26 48. The acts of the individual defendants deprived DECEDENT and
27 Plaintiffs of their particular rights under the United States Constitution.

28 ///

1 49. Upon information and belief, a final policymaker, acting under color of
2 law, who had final policymaking authority concerning the acts of the individual
3 defendants, ratified the acts of the defendants' acts and the bases for them. Upon
4 information and belief, the final policymaker knew of and specifically approved of
5 the individual defendants' acts.

6 50. Upon information and belief, a final policymaker has determined (or
7 will determine) that the acts of the individual defendants were "within policy."

8 51. By reason of the aforementioned acts and omissions, Plaintiffs suffered
9 loss of the love, companionship, affection, comfort, care, society, training, guidance,
10 and support of DECEDENT. The aforementioned acts and omissions also caused
11 DECEDENT's pain and suffering, loss of enjoyment of life, and death.

12 52. Accordingly, Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN
13 OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
14 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
15 and Does 1 through 10, inclusive each are liable to Plaintiff for compensatory
16 damages under 42 U.S.C. § 1983.

17 **FOURTH CAUSE OF ACTION**

18 **MUNICIPAL LIABILITY**

19 **FOR UNCONSTITUTIONAL CUSTOM OR POLICY**

20 **(42 U.S.C. § 1983)**

21 **(BY PLAINTIFFS' ASHLEY CEBALLOS AND MINORS, HC, AC,**
22 **INDIVIDUALLY, AND AS SUCCESSORS IN INTEREST TO**
23 **GRACIANO CEBALLOS AGAINST COUNTY)**

24 53. Plaintiff repeats and re-alleges each allegation in all the preceding
25 paragraphs of this Complaint with same force and effect as if fully set forth herein

26 54. On information and belief, Defendants DEPUTY KOLTE PAXSON;
27 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
28 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA

1 ZAVALA, and Does 1 through 10, inclusive, unjustified shooting of GRACIANO
2 CEBALLOS was found to be within KERN COUNTY SHERIFF'S DEPARTMENT
3 policy.

4 55. On information and belief, Defendants DEPUTY KOLTE PAXSON;
5 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
6 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
7 ZAVALA,, and Does 1 through 10, inclusive, unjustified shooting of DECEDENT
8 was ratified by COUNTY OF KERN supervisorial officers.

9 56. On information and belief, Defendants DEPUTY KOLTE PAXSON;
10 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
11 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
12 ZAVALA, and Does 1 through 10, inclusive, were not disciplined for the unjustified
13 shooting of DECEDENT.

14 57. On and for some time prior to the shooting and killing of DECEDENT
15 (and continuing to the present date), Defendants COUNTY and DOES 6-10, acting
16 with gross negligence and with reckless and deliberate indifference to the rights and
17 liberties of the public in general, and of Plaintiffs and DECEDENT, and of persons
18 in their class, situation and comparable position in particular, knowingly maintained,
19 enforced and applied an official recognized custom, policy, and practice of:

20 A. Employing and retaining as peace officers and other personnel,
21 including Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN
22 OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
23 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
24 ZAVALA, whom Defendants CITY and Does 6-10 at all times material
25 herein knew or reasonably should have known had dangerous
26 propensities for abusing their authority and for mistreating citizens by
27 failing to follow written department policies, including the use of
28 excessive force;

1 B. Of inadequately supervising, training, controlling, assigning, and
2 disciplining COUNTY employees and other personnel, including
3 Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
4 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
5 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
6 ZAVALA, whom Defendants COUNTY and Does 6-10 knew or in the
7 exercise of reasonable care should have known had the aforementioned
8 propensities and character traits, including the propensity for violence
9 and the use of excessive force;

10 C. By maintaining grossly inadequate procedures for reporting,
11 supervising, investigating, reviewing, disciplining and controlling the
12 intentional misconduct by Defendants DEPUTY KOLTE PAXSON;
13 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;
14 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE
15 PERKINS; DEPUTY JESSICA ZAVALA, who are peace officers
16 and/or agents of COUNTY;

17 D. By failing to discipline COUNTY peace officers' and/or agents'
18 conduct, including but not limited to, unlawful detention and excessive
19 force;

20 E. By ratifying the intentional misconduct of DEPUTY KOLTE
21 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN
22 EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY
23 DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and other
24 COUNTY peace officers' and/ or agents, who are COUNTY peace
25 officers and/or agents of COUNTY;

26 F. By having and maintaining an unconstitutional policy, custom, and
27 practice of detaining and arresting individuals without probable cause
28 or reasonable suspicion, and using excessive force, including deadly

1 force, which also is demonstrated by inadequate training regarding these
2 subjects. The policies, customs, and practices of Defendants COUNTY
3 and Does 6-10 were maintained with a deliberate indifference to
4 individuals' safety and rights; and

5 G. By failing to properly investigate claims of unlawful detention and
6 excessive force by COUNTY peace officers.

7 58. By reason of the aforementioned policies and practices of Defendants
8 COUNTY and DOES 6-10, DECEDENT was severely injured and subjected to pain
9 and suffering and ultimately, lost his life. The aforementioned policies and practices
10 of Defendants, including the custom, policy and practice of Defendant COUNTY in
11 allowing its peace officers to use unjustified, excessive and unreasonable deadly
12 force in shooting unarmed persons who had fired no shots with no punishment for
13 the involved peace officers was a moving force that caused Defendants DEPUTY
14 KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK
15 SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;
16 DEPUTY JESSICA ZAVALA to use unreasonable deadly force on DECEDENT,
17 who was also unarmed and fired no shots at Defendants nor otherwise, presented an
18 imminent danger to Defendants or others.

19 59. Defendants COUNTY and DOES 6-10, together with various other
20 officials, whether named or unnamed, had either actual or constructive knowledge of
21 the deficient policies, practices and customs alleged in the paragraphs above. Despite
22 having knowledge as stated above, these defendants condoned, tolerated and through
23 actions and inactions thereby ratified such policies. Said defendants also acted with
24 deliberate indifference to the foreseeable effects and consequences of these policies
25 with respect to the constitutional rights of DECEDENT, Plaintiff, and other
26 individuals similarly situated.

27 60. By perpetrating, sanctioning, tolerating and ratifying the outrageous
28 conduct and other wrongful acts, Defendants Does 6-10 acted with intentional,

reckless, and callous disregard for the life of DECEDENT and for DECEDENT's and Plaintiff's constitutional rights. Furthermore, the policies, practices, and customs implemented, maintained, and still tolerated by Defendants COUNTY and Does 6-10 were affirmatively linked to and were a significantly influential force behind the injuries of DECEDENT and Plaintiff.

61. The actions of each of Defendants Does 1-10 were willful, wanton, oppressive, malicious, fraudulent, and extremely offensive and unconscionable to any person of normal sensibilities, and therefore warrants the imposition of exemplary and punitive damages as to Defendants Does 1-10.

62. By reason of the aforementioned acts and omissions of Defendants COUNTY and Does 1-10, Plaintiff was caused to incur damages as stated elsewhere herein.

63. By reason of the aforementioned acts and omissions of Defendants COUNTY and Does 1-10, Plaintiff suffered and continues to suffer loss of love, companionship, affection, comfort, care, society, and future support.

64. Accordingly, Defendants COUNTY and Does 1-10 each are liable to Plaintiff for compensatory damages under 42 U.S.C. § 1983.

65. Plaintiff seek both wrongful death damages and survival damages under this claim. Plaintiff further claim all of Plaintiff's attorneys' fees and costs incurred and to be incurred in Plaintiff presenting, maintaining and prosecuting this action under 42 U.S.C. Section 1988.

FIFTH CAUSE OF ACTION

**FOR ASSAULT AND BATTERY CAUSING WRONGFUL DEATH
(BY PLAINTIFFS' ASHLEY CEBALLOS AND MINORS, HC, AC,
AGAINST ALL DEFENDANTS, INDIVIDUALLY AS HEIRS
AT LAW AND AS SUCCESSORS IN INTEREST TO GRACIANO
CEBALLOS, AGAINST ALL DEFENDANTS)**

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1 66. Plaintiffs listed above, hereby repeat, re-allege and incorporate each
2 allegation of each, and every paragraph above as though fully set forth herein.

3 67. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
4 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
5 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
6 inclusive, and each of them, assaulted and battered the Decedent GRACIANO
7 CEBALLOS, proximately causing GRACIANO CEBALLOS's death. Defendants
8 DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN
9 EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE
10 PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, and each of
11 them, engaged in an unauthorized, unconsented to touching of Decedent
12 GRACIANO CEBALLOS and utilized unreasonable, unnecessary, and excessive
13 force. Decedent GRACIANO CEBALLOS did not pose an immediate threat to the
14 life of or serious bodily injury to Defendants DEPUTY KOLTE PAXSON; SGT.
15 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
16 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
17 and DOES 1-10. Despite this, Defendants DEPUTY KOLTE PAXSON; SGT.
18 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
19 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
20 and DOES 1-10, inclusive, without issuing a warning, unjustifiably and unnecessarily
21 shot and killed Decedent GRACIANO CEBALLOS.

22 68. Defendants COUNTY OF KERN is liable for the actions of the
23 Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY
24 BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY
25 DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, in
26 assaulting, battering and killing of Decedent GRACIANO CEBALLOS as, at all
27 times mentioned herein, Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN
28 OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN

1 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
2 and DOES 1-10, inclusive, and each of them, were acting within the course and scope
3 of their employment and/or agency with Defendants COUNTY OF KERN. As such
4 Defendants COUNTY OF KERN is liable in *Respondeat Superior* for the injuries
5 caused by the acts and omissions of Defendants DEPUTY KOLTE PAXSON; SGT.
6 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
7 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
8 and DOES 1-10, inclusive, and each of them pursuant to California Government
9 Code §815.2 and 820.

10 69. As a direct and proximate result of said tortious acts, omissions or
11 conduct of Defendants, and each of them, GRACIANO CEBALLOS died and
12 Plaintiffs HC, AC, and ASHLEY CEBALLOS have sustained and incurred, and are
13 certain in the future to sustain and incur losses, injuries, and damages which are
14 itemized as follows:

- 15 a) Funeral and burial expenses in a sum to be determined according to proof.
16 Plaintiffs will request leave of Court to determine the total amount
17 thereof, once the same has been ascertained;
- 18 b) The value of decedent's financial support to be determined according to
19 proof; and
- 20 c) Said Plaintiffs have been deprived of the services, love, society, care,
21 comfort, protection, companionship and affection of Decedent
22 GRACIANO CEBALLOS, as a father, all to Plaintiffs' loss and general
23 damage in a sum in excess of the minimum jurisdictional limits of this
24 court.

25 70. The aforementioned acts of Defendants DEPUTY KOLTE PAXSON;
26 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
27 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
28 ZAVALA, and DOES 1-10, inclusive, and each of them, were malicious, willful,

1 oppressive and despicable conduct as herein alleged, as each aforementioned
 2 defendant acted with a conscious disregard of the rights and safety of Decedent
 3 GRACIANO CEBALLOS and said defendants acted with the specific intent to injure
 4 and kill Decedent GRACIANO CEBALLOS. Plaintiffs HC, AC, and ASHLEY
 5 CEBALLOS are therefore entitled to punitive damages in an amount enough to
 6 punish and make an example of these aforementioned individual Defendants, and, in
 7 order to promote greater safety and provide an incentive for said defendants and
 8 others so situated to not engage in such conduct.

9 71. As a direct and proximate result of said tortious acts, omissions or
 10 conduct of Defendants, and each of them, Plaintiffs HC, AC, and ASHLEY
 11 CEBALLOS have sustained and incurred, and are certain in the future to sustain and
 12 incur losses, injuries, and damages to be determined according to proof.

13 **SIXTH CAUSE OF ACTION**

14 **FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS** 15 **(BY PLAINTIFF EDWARD CEBALLOS AGAINST DEPUTY KOLTE** 16 **PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;** 17 **DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;** 18 **DEPUTY JESSICA ZAVALA, AND DOES 1-10, INCLUSIVE)**

19 72. Plaintiff hereby repeats, re-alleges and incorporates each and very
 20 allegation of each and every paragraph above as though fully set forth herein.

21 73. On April 18, 2020, Decedent, GRACIANO CEBALLOS was
 22 Intentionally shot by Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN
 23 OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
 24 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
 25 and DOES 1-10, inclusive, in the presence of Plaintiff EDWARD CEBALLOS, and
 26 Decedent, GRACIANO CEBALLOS was killed as a result. After the shooting said
 27 defendants knowing Plaintiff EDWARD CEBALLOS was a paraplegic and not
 28 capable of committing a crime, intentionally wrote false police reports with the

1 specific intent of having Plaintiff EDWARD CEBALLOS detained and held in
2 custody on a 3.5-million-dollar bail.

3 74. Consequently, Plaintiff EDWARD CEBALLOS was incarcerated in the
4 Kern County Jail for approximately over 3-4 weeks. The Defendants intentional; acts,
5 as described above were used to cause Plaintiff emotional harm. Such actions were
6 also used to coerce Plaintiff to enter a plea for resisting arrest, which was something
7 he was physically incapable of doing. As a direct and proximate result of defendants'
8 intentional conduct Plaintiff EDWARD CEBALLOS sustained severe emotional
9 distress, including Post Traumatic Stress Disorder (PTSD), psychological trauma and
10 other damages in an amount to be proven according to proof at the time of trial.

11 75. Plaintiff EDWARD CEBALLOS suffered severe emotional distress as
12 a result of the outrageous conduct.

13 76. The conduct of Defendants DEPUTY KOLTE PAXSON; SGT.
14 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
15 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
16 and DOES 1-10, inclusive was a substantial factor in causing EDWARD
17 CEBALLOS' severe emotional distress.

18 77. As a direct and proximate result of Defendants' conduct as alleged
19 above, and other undiscovered negligent conduct, Plaintiff was caused to suffer
20 severe pain and suffering and lost earning capacity.

21 78. The COUNTY is vicariously liable for the wrongful acts of Defendants
22 DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN
23 EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE
24 PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, pursuant to
25 sections 815.2(a) and 820 of the California Government Code, which provides that a
26 public entity is liable for the injuries caused by its employees within the scope of the
27 employment if the employee's act would subject him or her to liability.

28 ///

1 79. The conduct of Defendants DEPUTY KOLTE PAXSON; SGT.
2 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
3 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
4 and DOES 1-10, inclusive, was malicious, wanton, oppressive, and accomplished
5 with a conscious disregard for the rights of Plaintiffs, entitling Plaintiff, to an award
6 of exemplary and punitive damages as to individual Defendants.

7 **SEVENTH CAUSE OF ACTION**

8 **FOR WRONGFUL DEATH/SURVIVAL BASED ON NEGLIGENCE**
9 **(INCLUDING NEGLIGENT TACTICS) (BY PLAINTIFFS' ASHLEY**
10 **CEBALLOS AND MINORS, HC, AC, AGAINST ALL DEFENDANTS,**
11 **INDIVIDUALLY, AS HEIRS-AT-LAW AND AS SUCCESSORS IN**
12 **INTEREST TO GRACIANO CEBALLOS AGAINST ALL DEFENDANTS)**

13 80. Plaintiffs hereby repeats, re-alleges and incorporates each and every
14 allegation of each and every paragraph above as though fully set forth herein.

15 81. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
16 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
17 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
18 inclusive, and each of them, had a duty to Decedent GRACIANO CEBALLOS and
19 Plaintiffs to comply with California Police Officers Standard Training, national
20 standards for use of force and their own police departments' training mandated for
21 tactical firearms training; to not utilize careless or reckless police tactics that could
22 create a dangerous circumstance or heighten a situation of danger that could result in
23 the use of unnecessary force; to comply with OCSD and national and their respective
24 police departments' training mandated for tactical firearms training; to not cause
25 discharge of their firearm unless it was justified under the circumstances; to respond
26 appropriately to persons they may believe are a possible suspect of an offense without
27 choosing to use deadly force before determining if the decedent posed an immediate
28 threat to the safety of the officers or to others. Defendants DEPUTY KOLTE

1 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;
 2 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
 3 JESSICA ZAVALA, and DOES 1-10, inclusive, and each of them, had a duty to
 4 Decedent GRACIANO CEBALLOS and Plaintiffs to use appropriate tactics
 5 regarding verbalization, de-escalation, not shooting into vehicles, calling for back-
 6 up, use of less-than-lethal force, techniques and weapons, containment, issuing
 7 verbal warnings and other appropriate police tactics before resorting to utilizing
 8 deadly force. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
 9 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
 10 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
 11 inclusive, and each of them, were trained to use deadly force only in the direst of
 12 circumstances, and only after all other means have been exhausted, and only as a last
 13 resort.

14 82. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
 15 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
 16 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
 17 inclusive, and each of them, breached their duties by using excessive, unnecessary
 18 and deadly force against Decedent GRACIANO CEBALLOS, negligently using
 19 improper tactics and breaching their duties set forth above and in California Police
 20 Officers Standard Training, accepted national standards, and Kern County Sheriff
 21 Department Policies and Procedures manual and training, including the use of force
 22 and the use of deadly force, proximately causing the death of Decedent GRACIANO
 23 CEBALLOS.

24 83. As a direct and legal result of the aforesaid negligence, carelessness and
 25 unskillfulness of Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN
 26 OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
 27 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
 28 and DOES 1-10, inclusive, inclusive, and each of them, and as a result of their breach

1 of duty of care to Decedent GRACIANO CEBALLOS, Defendants DEPUTY
2 KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK
3 SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;
4 DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, and each of them
5 proximately caused the death of GRACIANO CEBALLOS, and damages to
6 Plaintiffs.

7 84. As a direct and proximate result of said tortious acts, omissions or
8 conduct of Defendants, and each of them, Plaintiffs father, Decedent GRACIANO
9 CEBALLOS died and Plaintiffs have therefore sustained and incurred, and are
10 certain in the future to sustain and incur losses, injuries, and damages which are
11 itemized as follows:

- 12 a) Funeral and burial expenses in a sum to be determined according to proof.
13 Plaintiffs will request leave of Court to determine the total amount
14 thereof, once the same has been ascertained;
- 15 b) The value of decedent's financial support to be determined according to
16 proof; and
- 17 c) Plaintiffs have been deprived of the services, love, society, care, comfort,
18 protection, companionship and affection of Decedent GRACIANO
19 CEBALLOS, he having been a loving and devoted father, all to Plaintiffs
20 loss and general damage in a sum in excess of the minimum jurisdictional
21 limits of this court.

22 85. The aforementioned acts of Defendants DEPUTY KOLTE PAXSON;
23 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
24 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
25 ZAVALA, and DOES 1-10, inclusive, and each of them, were malicious, willful,
26 oppressive and despicable conduct as herein alleged, as each aforementioned
27 defendant acted with a conscious disregard of the rights and safety of Decedent
28 GRACIANO CEBALLOS and said defendants acted with the specific intent to injure

1 and kill Decedent GRACIANO CEBALLOS. Plaintiffs are therefore entitled to
2 punitive damages in an amount enough to punish and make an example of these
3 aforementioned individual Defendants, and, in order to promote greater safety and
4 provide an incentive for said defendants and others so situated to not engage in such
5 conduct.

6 **EIGHTH CAUSE OF ACTION**

7 **FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
8 **(BY PLAINTIFF EDWARD CEBALLOS AGAINST DEPUTY KOLTE**
9 **PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;**
10 **DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;**
11 **DEPUTY JESSICA ZAVALA, AND DOES 1-10, INCLUSIVE)**

12 86. Plaintiff hereby repeats, re-alleges and incorporates each and every
13 allegation of each and every paragraph above as though fully set forth herein.

14 87. On April 18, 2020, Decedent, GRACIANO CEBALLOS was shot by
15 Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY
16 BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY
17 DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, in
18 the presence of Plaintiff EDWARD CEBALLOS, and Decedent, GRACIANO
19 CEBALLOS was killed as a result.

20 88. Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
21 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
22 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
23 inclusive, were negligent and careless in the use of their firearms, including being
24 careless in the handling of the firearm and in the firing of the firearm that was
25 unjustified under the circumstances. Defendants were unreasonable in failing to use
26 appropriate tactics regarding verbalization, de-escalation, calling for back-up, use of
27 less-than-lethal force, techniques and weapons, containment, issuing verbal warnings
28 and other appropriate police tactics before resorting to utilizing deadly force.

1 89. Plaintiff EDWARD CEBALLOS was in the immediate vicinity of
2 Decedent, GRACIANO CEBALLOS and Defendants DEPUTY KOLTE PAXSON;
3 SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY
4 NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA
5 ZAVALA, and DOES 1-10, inclusive, at that time that Defendants DEPUTY KOLTE
6 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;
7 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
8 JESSICA ZAVALA, and DOES 1-10, inclusive, shot Decedent, GRACIANO
9 CEBALLOS, and Plaintiff EDWARD CEBALLOS contemporaneously witnessed
10 and perceived the injury producing shooting event incident both visibly and audibly.

11 90. At the time of the negligent and deadly conduct of Defendants DEPUTY
12 KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK
13 SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS;
14 DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, as set forth above,
15 Plaintiff EDWARD CEBALLOS was contemporaneously aware that the conduct was
16 causing injury to his immediate blood relative, brother, Decedent, GRACIANO
17 CEBALLOS because Plaintiff EDWARD CEBALLOS contemporaneously witnessed
18 the gun shots and heard the shots fired and also heard the moaning of Decedent,
19 GRACIANO CEBALLOS who was struck with the bullets that caused his death.

20 91. As a direct and proximate result of contemporaneously witnessing the
21 injury to Decedent, GRACIANO CEBALLOS, caused by the negligent and careless
22 conduct of Defendants DEPUTY FAOUR, DEPUTY KOCHER, and DOES 1-10,
23 and each of them, Plaintiff EDWARD CEBALLOS sustained severe emotional
24 distress, including Post Traumatic Stress Disorder (PTSD), psychological trauma and
25 other damages in an amount to be proven according to proof at the time of trial.

26 92. Plaintiff EDWARD CEBALLOS suffered severe emotional distress as
27 a result of the outrageous conduct.

28 ///

1 93. The conduct of Defendants DEPUTY KOLTE PAXSON; SGT.
2 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
3 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
4 and DOES 1-10, inclusive was a substantial factor in causing EDWARD
5 CEBALLOS' severe emotional distress.

6 94. As a direct and proximate result of Defendants' conduct as alleged
7 above, and other undiscovered negligent conduct, Plaintiff was caused to suffer
8 severe pain and suffering and lost earning capacity.

9 95. The COUNTY is vicariously liable for the wrongful acts of Defendants
10 DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN
11 EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE
12 PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10, inclusive, pursuant to
13 sections 815.2(a) and 820 of the California Government Code, which provides that a
14 public entity is liable for the injuries caused by its employees within the scope of the
15 employment if the employee's act would subject him or her to liability.

16 96. The conduct of Defendants DEPUTY KOLTE PAXSON; SGT.
17 ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
18 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
19 and DOES 1-10, inclusive, was malicious, wanton, oppressive, and accomplished
20 with a conscious disregard for the rights of Plaintiffs, entitling Plaintiff, to an award
21 of exemplary and punitive damages as to individual Defendants.

22 **NINTH CAUSE OF ACTION**

23 **FOR VIOLATION OF THE SECTION 52.1 OF**
24 **THE CALIFORNIA CIVIL CODE (BANE ACT VIOLATIONS)**
25 **(BY PLAINTIFFS ASHLEY CEBALLOS AND MINORS, HC, AC,**
26 **AGAINST ALL INDIVIDUAL DEFENDANTS)**

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1 97. Plaintiffs MINORS, HC, AC, and adult ASHLEY CEBALLOS hereby
2 repeat, re-allege and incorporate each allegation of each, and every paragraph above
3 as though fully set forth herein.

4 98. This action is brought pursuant to section 52.1 of the California Civil
5 Code. The present action is also brought pursuant to section 820 and 815.2 of the
6 Government Code. Pursuant to section 820 of the California Government Code, as a
7 public employee, Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN
8 OLMOS; DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN
9 PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA,
10 and DOES 1-10, inclusive, are liable for injuries caused by their acts or omissions to
11 the same extent as a private person.

12 99. At all times mentioned herein, Defendants DEPUTY KOLTE
13 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;
14 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
15 JESSICA ZAVALA, and DOES 1-10, inclusive, were acting within the course and
16 scope of their employment and/or agency with Defendants COUNTY OF KERN and
17 the County of Kern Sheriff's Department. As such defendant COUNTY is liable in
18 respondeat superior for the injuries caused by the acts and omissions of Defendants
19 DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN
20 EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE
21 PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10, pursuant to section
22 815.2 of the California Government Code.

23 100. DECEDENT GRACIANO CEBALLOS was subjected to excessive
24 force by Defendants DEPUTY KOLTE PAXSON; SGT. ADRIAN OLMOS;
25 DEPUTY BRYAN EIDENSHINK SR; DEPUTY NATHAN PUCILOWSKY;
26 DEPUTY DWAYNE PERKINS; DEPUTY JESSICA ZAVALA, and DOES 1-10,
27 in the form of gunshots fired by said defendants which struck DECEDENT and
28 caused him serious personal injuries from which he eventually died. The shooting

1 was unreasonable and unwarranted as the circumstances under which the shooting
2 occurred did not require the use of any force whatsoever. As an unreasonable use of
3 force, the shooting constituted a violation of GRACIANO CEBALLOS's
4 constitutional rights against unreasonable searches and seizures protected by the
5 Constitution of the State of California.

6 101. All the above acts and omissions of Defendants DEPUTY KOLTE
7 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;
8 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
9 JESSICA ZAVALA, and DOES 1-10, were willful, wanton, malicious and
10 oppressive thereby justifying the awarding of exemplary and punitive damages as to
11 said defendants.

12 102. As a proximate result of the acts of Defendants DEPUTY KOLTE
13 PAXSON; SGT. ADRIAN OLMOS; DEPUTY BRYAN EIDENSHINK SR;
14 DEPUTY NATHAN PUCILOWSKY; DEPUTY DWAYNE PERKINS; DEPUTY
15 JESSICA ZAVALA, and DOES 1-10, GRACIANO CEBALLOS suffered multiple
16 gunshot wounds which caused him severe injuries from which he eventually died.

17 103. The above acts of defendants violated GRACIANO CEBALLOS's civil
18 rights as protected by section 52.1 of the Civil Code.

19 104. As such, Plaintiffs' Minors, HC, AC, and adult ASHLEY CEBALLOS
20 are entitled to compensatory damages according to proof, including those permitted
21 by Section 52 of the Civil Code, punitive and exemplary damages, the costs of suit
22 incurred in this action, reasonable attorney's fees as permitted by the Civil Code
23 section 51.7 and 52, and any other additional relief that the court deems proper.

24 **PRAYER**

25 WHEREFORE, PLAINTIFFS' MINORS, HC, AC, by and through Their
26 Guardian Ad Litem DOLORES HERNANDEZ, and ASHLEY CEBALLOS
27 EDWARD CEBALLOS, and EMMA CEBALLOS, and each of them, hereby
28 demand the following relief, against all of the Defendants:

- 1 1. Compensatory general and special damages, including both survival damages
- 2 and wrongful death damages, in the amount to be proven at trial;
- 3 2. For funeral and burial expenses, and loss of financial support;
- 4 3. Reasonable attorneys' fees and expenses of litigation, including those fees
- 5 permitted by 42 U.S.C. §1988; Attorney fees Awards Act of 1976, 42 U.S.C.
- 6 §1983 and California Civil Code §52;
- 7 4. Compensatory general damages for severe emotional distress, anxiety, fear
- 8 and all other non-economic damages, in the amount to be proven at the time
- 9 of trial;
- 10 5. Punitive and exemplary damages pursuant to California Civil Code §3294
- 11 against Defendants DOES 1 to 50 only;
- 12 6. Costs of suit necessarily incurred herein;
- 13 7. Prejudgment interest according to proof;
- 14 8. Pre-Judgment and Post-Judgment interest; and
- 15 9. Such other and further relief as the Court deems just and proper.

16 Dated: October 22, 2020

GUIZAR, HENDERSON & CARRAZCO, LLP

17
18 By: 

HUMBERTO GUIZAR
CHRISTIAN CONTRERAS
Attorneys for Plaintiffs
BY PLAINTIFFS MINORS, HC, AC,
ASHLEY CEBALLOS EDWARD
CEBALLOS, and EMMA CEBALLOS

DEMAND FOR JURY TRIAL

22 Plaintiffs hereby demand a trial by jury.

23 Dated: October 22, 2020

GUIZAR, HENDERSON & CARRAZCO, LLP

24
25 By: 

HUMBERTO GUIZAR
CHRISTIAN CONTRERAS
Attorneys for Plaintiffs
BY PLAINTIFFS MINORS, HC, AC,
ASHLEY CEBALLOS EDWARD
CEBALLOS, and EMMA CEBALLOS